

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/04/99

ORAL JUDGEMENT

1. The grievance of the petitioner in this petition under Article 226 of the Constitution of India is that he has been illegally detained under order dated 18th August 1998 passed by the Police Commissioner, Ahmedabad under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA") and has prayed that the aforesaid order be quashed and he be immediately released from illegal detention.

2. What transpires from the grounds of detention is that the petitioner is dealer in foreign liquor. On one occasion he was apprehended by the Authority with 387 bottles of foreign liquor and beer. For involvement in such activity the petitioner was booked under relevant section of the Bombay Prohibition Act. No other registered offence came into existence against the petitioner. In addition to this, the two confidential witnesses gave statements against the petitioner on account of which the detaining Authority was satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed.

3. The impugned order has been challenged in the course of arguments by learned Counsel for the petitioner on only one ground that the activities of the petitioner can not be called as activities prejudicial for maintenance of public order.

4. The subjective satisfaction of the detaining Authority that the petitioner is a bootlegger requires no interference inasmuch as from registered offence as well as from the statements of two confidential witnesses there was sufficient material before the detaining Authority to reach subjective satisfaction that the petitioner is a bootlegger. However, subjective satisfaction of the detaining authority that the activities of the petitioner were prejudicial for maintenance of public order is not only illusory but is based on insufficient material on record. The first material to reach this subjective satisfaction was one registered offence against the petitioner under the Bombay Prohibition Act. No doubt 387 bottles of foreign liquor and beer were recovered from the petitioner on that occasion, but there is nothing in the

grounds of detention that at the time of search, seizure and arrest the petitioner created any obstruction before the Authority due to which situation prejudicial for maintenance of public order arose. For committing breach of the provision of Bombay Prohibition Act on that occasion the petitioner was adequately dealt with under ordinary law. Consequently this incident could not be pressed in service for reaching the subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

5. Then remains the statements of two confidential witnesses. One witness stated about the incident dated 25.7.1998 when the petitioner asked the witness to spare his vehicle for some time so that it may be taken by the accomplice of the petitioner to the place of his choice carrying five boxes of foreign liquor. The witness refused to oblige the petitioner whereupon he was dragged from his vehicle and beaten. The knife was also placed on the person of the witness, but surprisingly enough no knife injury was caused to the witness, likewise no injury was caused to any person who collected to save the victim. Consequently this imaginary story even on its face value cannot be considered to have created situation prejudicial for maintenance of public order. It cannot be said that even the tempo of the life of the locality was disturbed by such insignificant incident.

6. The second witness stated about the incident dated 2nd August 1998 at 2.00 p.m. At that time the petitioner in the company of his accomplices approached the witness to keep certain quantity of liquor for some time in his house. The witness refused to accept this request of the petitioner whereupon he was dragged on road and was beaten. The witness shouted for help whereupon people gathered there. The petitioner became more excited and threatened the people and rushed towards them showing knife. This incident on its face value cannot be said to have disturbed even tempo of the life of the locality nor it can be said to have created sense of insecurity or feeling of alarm within the extended meaning of public order as contained in Explanation to Sub.Section 4 of Section 3 of the PASA. Thus, the subjective satisfaction of the detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order was illusory and on such illusory subjective satisfaction impugned detention order could not be passed. It has, therefore, to be quashed.

7. The result is that this petition succeeds. The impugned order of detention dated 18.8.1998 is hereby

quashed. The petitioner shall be released forthwith from the custody unless wanted in some other case.

sd/-

Date : April 01, 1999 (D. C. Srivastava, J.)

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